IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

MFA.No. 77 of 2003(B)

WCC.226/1996 OF COMMISSIONER FOR WORKMEN'S COMPENSATION .,THRISSUR
.....

APPELLANT: 2ND OPP.PARTY

THE BRANCH MANAGER, NEW INDIA ASSURANCE
COMPANY LTD., IRINJALAKUDA.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: APPLICANT AND OPP.PARTY-1.
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1. SIVARAMAN, S/O.KESAVAN, KUNDAYI HOUSE,
PETTA POST, CHALAKUDY, MUKUNDAPURAM TALUK.

2. P.K.BALAN & COMPANY, GOVT.ABKARI
CONTRACTORS, IRINJALAKUDA.

BY ADV. SRI.T.N.MANOJ.
SRI.DINESH R.SHENOY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.347/03 IN MFA.77 OF 2003

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DISMISSED.

ID/- J.B. KOSHY, JUDGE.

ID/- K. HEMA, JUDGE.

17.10.2007

// TRUE COPY //

P.S. TO JUDGE.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 77 of 2003

Dated this 17th day of October, 2007

JUDGMENT

Koshy,J:

The Insurance company challenges the award by the Commissioner for Workmen's Compensation passed in WCC No.226 of 1996. The first respondent in the appeal sustained serious injuries in an accident during the course of employment. He was a toddy tapper. He sustained injuries due to a fall from the coconut tree on 6.10.1995. The Commissioner for Workmen's Compensation held that the 1st respondent-applicant is entitled to get workmen's compensation from the employer. There is no dispute that the first respondent was covered under the policy. But as per the policy the Insurance company is liable to compensate the disability as assessed by the doctor. The medical board assessed 26% disability.

2. Learned counsel for the Insurance company contended that the policy is not issued as per any statute. The policy is only group personal accident policy and it is strictly contractual. It is further contended that as per the terms of the insurance the maximum sum

insured is Rs.50,000/- and, for permanent disability, such percentage as certified by the doctor proportionate to the sum insured is payable. In this case, the disability is 26% . Therefore, the liability of the Insurance Company is 26% of Rs. 50,000/-. That is, Rs.13,000/-. The interest liability is specifically excluded. The insurance company is not liable to pay interest as liability to pay interest is specifically excluded by the terms of the policy. Therefore, we agree with the contention that appellant Insurance company is liable to pay only Rs.13,000/-. The Commissioner after calculating an amount of Rs.1,49, 124/- directed the Insurance company to pay Rs.50,000/-, (which was also deposited) and balance amount was directed to be paid by 2nd respondent-employer. The employer did not file any appeal. Considering the facts of the case and the financial condition of the applicant, the amount deposited by the Insurance company as a condition precedent in the Statue shall be disbursed to the applicant (1st respondent in the appeal), but the Insurance company is entitled to recover the excess amount over and above Rs.13,000/- from the employer in execution of the award itself. Impugned award is modified accordingly.

Appeal is allowed to the above extent.

J.B. KOSHY, JUDGE.

Krs

K. HEMA, JUDGE.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 77 of 2003

Dated this 17th day of October, 2007

JUDGMENT